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the policy, when the usual suicide clause is omitted, and an absolutely 'incontestable' clause included. * * * Bearing these things in mind, and while conceding the strength of the arguments upon public policy on which the *Ritter* case is based, we still think, in view of the prior decisions above cited to the contrary of the rule there laid down, and the general apparent acquiescence in those decisions by the courts and by the people, that we ought to hold, in accordance with those decisions, that, in a case where third persons are beneficiaries, intentional suicide of the insured while sane does not avoid the policy, in the absence of any provisions in the policy to that effect. Whether the rule would apply to a case where the personal representative of the insured were bringing the action for the benefit of the estate of the insured is not decided, because that case is not before us."

NATIONAL BANKS—LIABILITY OF DIRECTORS—ILL-HEALTH AND ABSENCE.—In a suit in equity by a receiver against the directors of a national bank for losses alleged to be due to their negligence and violation of a national bank law, one of them set up the defense of ill-health and absence from the city. *Rankin v. Cooper et al.* (1907), — C. C., W. D., Ark. E. D. —, 149 Fed. Rep. 1010.

The court says: "I think a passing illness, temporary in character, is an excuse for the period it lasts, but if a person becomes a confirmed invalid for a number of years and unable to attend to the duties of a director, he has no right to hold on to the position and at the same time decline its corresponding responsibilities. By doing so he invites others to trust the bank on the strength of his name." This statement, however, is *obiter dictum*, or little better, for the court evidently concluded that he was not so ill as to be unable to perform his duties as director. The court continues: "It is also urged in defense of Col. Roots that he was necessarily absent from Little Rock a great deal and hence unable to attend many board meetings. But to permit this to operate as a defense in a case of this kind would be putting a premium on the failure to attend board meetings and a penalty on those who attend regularly." The conclusions here stated are consistent with well-established principles. Bank directors "contract for reasonable capacity, skill and care in the discharge of their duties." MORSE, BANKS AND BANKING (4th Ed.) § 125. Yet the few decisions are not altogether harmonious. Mr. Morse (*id.* § 128 f.) says: "A director cannot escape liability for the results of his ignorance of the affairs of the bank on the ground that he has been in ill-health. His authority in *German Savings Bank v. Wulfekuhler* (1877), 19 Kan. 60, in which the precise point was but barely discussed. Non-resident directors cannot relieve themselves of their statutory and common law duties by arrangement with brother directors. *Houston v. Thompson et al.* (1898), 122 N. C. 365. In *Briggs v. Spaulding* (1890), 141 U. S. 132, 11 Sup. Ct. 924, 35 L. Ed. 662, one director defended his lack of attention to the business of the bank on the ground of old age, and absence at his summer place. Another, having accepted a directorship with the knowledge that his business would require frequent absences, set up these absences and the sickness of himself and wife. A third, though an invalid, had allowed himself to be

re-elected a director. The majority opinion passed directly upon the defence of the third director only, holding it to be good, though not in the most positive language. In a dissenting opinion, Mr. JUSTICE HARLAN expressed a vigorous disapproval of all three defences. In this same case it was held that the president was completely relieved from liability during a year's sick-leave, and that he was under no obligation to resign. Said the court: "Invalids are permitted to indulge in the hope of recovery, and are not called upon by reason of illness to retire at once from the affairs of this world and confine themselves to preparation for their passage into another." Mr. FINKELABURG, D. J., in the principal case, apparently approves this ruling.

PRINCIPAL AND SURETY—CONDITION PRECEDENT TO LIABILITY ON BOND.—R. employed one D. to furnish material and to construct a certain building. Contract required work to be completed on or before Dec. 1, 1901. The Fidelity Co. became surety of D. for the performance of this contract. Provision in the surety bond required R. to notify Fidelity Co. of any delinquency and also required notice within thirty days after default so that the surety might go ahead and complete contract if it so desired. D. defaulted and no notice was sent to the company. *Held*, that the defense that surety was not notified as the parties had contracted was a good one, and that the surety by failure of the principal to so notify was released. *United States Fidelity & Guaranty Co. v. Rice* (1906), — C. C. A., 8th Cir. —, 148 Fed. Rep. 206.

The court in holding as it does, merely gives the contract force and effect. Where conditions known to the obligee, upon which the surety agrees to become bound, are not complied with, then the surety is discharged. *Rice v. Surety Co.*, 103 Fed. 427. In this case the agreement was that the assured should apply certain checks upon the conduct of the principal and the court held that until the checks were applied no liability attached. See also *Cunningham v. Wrenn*, 23 Ill. 62, where the court held that, when the condition was the payment of a certain sum of money if the payment was not made within the time, the surety might abandon his contract of suretyship. The following is from *National Surety Co. v. Long*, 125 Fed. 887. "The all-sufficient, the conclusive answer to the suggestion that the subject of the warranty or of the condition precedent is immaterial, and its breach without effect, is that the parties had the right to agree and they have contracted otherwise. The immateriality of a warranty or of a condition precedent made by the agreement of the parties, and the innocuousness of a failure to perform it, do not nullify or mitigate the fatal effect of the failure prescribed by their contract." In many cases the surety contract provides that in case of default that notice shall "immediately" be sent to the surety by the assured. The court in *Surety Co. v. Long*, *supra*, interpreted that word and held that a delay of eleven days was not "immediately." "There may be cases where the question of the sufficiency of a notice in time and manner of service should be submitted to the consideration of the jury. * * * But there is nothing of this character in the case in hand. The act of giving the notice was a simple one. Its performance required nothing